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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: TORTURE AND DETENTION

Written statement*/ submitted by the Romanian Independent Society of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9 January 2001]

*/ This written statement is issued, unedited, as received in English and French from the submitting non-governmental organization(s).

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ENG

(1) The Romanian Independent Society of Human Rights (SIRDO) is a non-governmental organisation, established in 1990, whose purpose is the protection and the promotion of human rights and fundamental freedoms.

By counselling and ensuring the assistance of persons whose rights have been infringed in the relationship with the state authorities, SIRDO has created in time a working system with the victims of abuses based on trust, on the initiation on a dialogue with the competent governmental compartments. By the UN special consultative status ECOSOC obtained in 1998 SIRDO has been ensuring the accomplishment of a consultancy relationship with UN.

(2) In 2000 SIRDO continued the activities corresponding to its objectives:

- the monitoring of the respect of human rights in 37 penitentiaries. Interviews have been made and number of 5994 detainees have sent reports;
- activities of counselling and specialised juridical assistance granted to a number of 900 detainees (men, women, underage persons), who declared that they were submitted tot torture in the police lock-ups or in prisons;
- the support of an information programme on human rights education, comprising a number of 1850 detainees.

(3) The very large number of complaints coming from different categories of population as regards the modality the penal justice is made in Romania denotes a flagrant incompatibility among the institutional practices, the internal legal framework (the Penal Code, the Code of Penal Procedure, normative acts and secret military regulations etc.) and the standards of human rights protection and promotion that can be found in the international treaties and conventions ratified by Romanian and which, according to art. 11 in the Constitution, are the internal law.

The Parliament did not succeed to harmonise the internal laws directly focused on the person's freedom and make them coherent:

- the maintenance of Law no. 23/1969 on the regime of serving to punishments deprived of freedom;
- the adoption of new penal provisions in the Penal Code - Law no. 140/1996 unduly hardens the sum of punishments deprived of freedom, especially for minor offences;
- the maintenance of secret orders and military regulations (for example: order 410/1974 that settles the preventive arrest) that are not even accessible to judges.

(4) The promotion of alternative methods to deprivation of freedom has been practically annulled.

The institutional pressures of all kinds and the persecution by law annuls any chance of the individual to be judged with a view to finding out the truth, by respecting human dignity, and it hinders the free access to justice.

Manipulation, abuse and violence in the police lock-up are systematically and constantly applied in the first 24 hours; the investigation bodies "force" the detainee to acknowledge the offence in a declaration, for the investigators to go on gathering the evidence on the basis of the declaration. Abuses in this period can take various forms, ranging from violence to more subtle methods of intimidation and constraint.

According to law no. 54/1993, only the military prosecutor (an active officer) is the authority who has the exclusive competence of investigating the complaints handed in by the persons abused during the investigations.

In solving these complaints, the military prosecutors rely on the police for the investigation. The military prosecutors are not independent and impartial, and they systematically refuse to send police officers to Court for abusive acts. One may conclude that a detained person submitted to ill-treatments by the police finds it very hard to defend him/herself in the chaotic procedures and authorities, that are not characterised by rapidity.

In these circumstances the prosecutors continues the investigations the way highlighted by the police bodies, and she/he ignores the assertions of the accused or defendant.

The judges are reserved in rejecting the indictments of the prosecutors, because they are afraid that superior Courts could change their sentences, which has negative consequences on the annual grade or because they do not wish to burden the decision-taking process, which is already very stifling.

That is why the Courts rarely exert an active role in finding out the truth and they grant importance to the declarations given by the accused during the detention.

(5) The penitentiaries become overcrowded, a fact which proves the seriousness of the deterioration of the detention areas, the conditions being inhuman and degrading and tend to become a form of torture.

In the session no. 56/2000 of the Commission on Human Rights, the UN Special Rapporteur on Torture, when referring to the detention conditions in Romania, asserted that: "no state has the right to submit persons to such conditions, despite the constraints imposed by the lack of resources, the rigidity of the legal system or the time which is necessary for building new places." The level of over-population - according to the same report - is of the 180%, even over 200%. The necessity to reform the Romanian penal system, including all forms of detention, is evident.

(6) From among the main causes of over-population, we can enumerate:

- the lack of adequate penal legislation, based on humanitarian principles;
- the persistence of secret orders and military provisions, that settle the preventive arrest;
- there are no jails, and the persons detained under suspicion are under the custody of the Ministry of the Interior, which is unbearable;
- the infringement of the presumption of innocence;
- the long duration of the penal process;
- the cases with unknown author from the police records are solved by making recidivists acknowledge the offences by means of manipulation and constraint, which leads to substantial and unjustified increase of the sentence;
- the persons accused of having committed minor offences are detained;
- the liberation on parole is governed by arbitrary criteria, which are different in each Court or region, and they are often clearly focused against the detainee.

(7) The fact that the penitentiaries are over-crowded - which is a consequence of an incoherent, abusive penal policy deliberately headed by the Romanian state against the civilians - denotes a massive infringement of human rights and fundamental freedoms, of internal norms - the Constitution, penal laws and laws on penal procedures - and of international instruments.

Romania adhered to a series of international treaties, conventions and pacts, by signing and ratifying them:

- the International pact on the Civilian and Political Rights (9 December 1974)
- The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (9 October 1990).

(8) Considering the above-mentioned facts, SIRDO insistently requests the Commission on Human Rights, by using the competence of UN's Special Rapporteur on Torture, to urgently resort to adopting measures on the following specific problems, that will lay the basis of the reform of the detention system in Romania:

a) the harmonisation of the Romanian penal legislation to the international provisions;

b) the demilitarisation of the penitentiaries, which could ensure the transparency of the developed activities, and the application of an independent administrative control;

c) the establishment of alternatives to prisons;

d) the approach of a penal policy on the liberation on parole which can improve the reintegration of the detainee in society and the diminution of over-population;

e) the category of recidivists must be revised as regards the legislative framework and also the functioning of the state institutions and civil society;

f) the revision and re-evaluation of the incident reports made by the penitentiary authorities;

g) the abolishment of SIPA (Independent Unit for Protection and Anti-Corruption) - an anti-democratic and un-constitutional structure exerting an ill-fated role in the Romanian penitentiary system. Its activities - that are specific to secret military information services often have an illegal and abusive character (going beyond their attributions, abuse against the penitentiary staff and detainees, the latter even attempting to commit suicide in several cases);

h) the establishment of jails for persons detained under suspicion so that only detainees with final sentences should stay in penitentiaries and a real reform should start in the penitentiary, considering the purpose, the efficiency of custody and the programmes of social reintegration;

i) it is necessary to make changes on the service o guard and supervision in the process of reforming the penitentiary system. We consider that the staff guarding the detainees should belong to the Independent Cultural - Educative Service. Thus a relationship of trust could be built between the detainee and the staff directly dealing with the detainee, which would actively improve the programmes of the detainees'social reintegration;

j) the penitentiary should be opened towards community, and the penitentiary problems should be presented to the Prefect's Offices, City halls, Churches, local social services, NGO-s;

k) the penitentiaries should be visited periodically by judges, for the act of justice to become effective;

l) food should be served in open areas. At present a number of over 50,000 persons in penitentiaries are given food in the detention area, in poor hygiene conditions.

We wish to mention that these are the most important problems that SIRDO identified in the detention system in Romania. We think that the intervention of the Commission on Human Rights in Romania will enable the elaboration of a reform-programme that should be compatible with the international standards setting the rights of the persons deprived of freedom.